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"Ensuring the Security of America's Borders through the Use of Biometric Passports and Other Identity Documents."

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INTRODUCTION

Chairman Lungren and Ranking Member Sanchez, I thank you for the opportunity to return to your committee to discuss the use of biometrically-enhanced documents to secure our country's borders. I am currently a principal at the consulting firm Mehlman Vogel Castagnetti, Inc. I also serve as an Adjunct Fellow at the Center for Strategic and International Studies, although the views in this testimony are my own and do not represent CSIS which does not take policy positions.

As you know, following confirmation by the Senate in 2003, I served as Assistant Secretary for Border and Transportation Security Policy and Planning until my resignation from the Department of Homeland Security in March of this year. In this capacity, I was responsible for policy development within the Border and Transportation Security Directorate, reporting to Under Secretary Asa Hutchinson and Secretary Tom Ridge. BTS coordinated policy development and operational activities in the fields of immigration and visas, transportation security, law enforcement, and cargo security which largely were carried out in the field by BTS agencies – U.S. Customs and Border Protection (CBP), U.S. Immigration and Customs Enforcement (ICE), and the Transportation Security Administration (TSA).

I am excited to have the opportunity to appear after the Committee has heard from the Department of State's Deputy Assistant Secretary for Passport Services Frank Moss and Acting Assistant Secretary for BTS Policy Elaine Dezenski. I am proud of the extremely productive relationship DHS formed with the State Department during my tenure and especially of the many initiatives I was privileged to pursue with Mr. Moss. And both as my former deputy and as my successor as Assistant Secretary, Ms. Dezenski has demonstrated great skill in tackling difficult public policy issues such as those being discussed today.

BACKGROUND

During my time at DHS, the Department deployed revolutionary uses of biometrics to better secure our borders and domestic transportation systems. Most famous of these success stories was the US-VISIT program. This initiative, discussed in full below, has come under criticism in recent months for not yet encompassing a 100% entry-exit system. These criticisms fail to recognize the necessity of deploying US-VISIT in manageable stages to ensure success. Before Secretary Ridge took the bold step of allowing an entry-exit system to be built in increments,

year after year went by with no deployment because nobody could figure out how to deploy a universal system that would actually find unwanted criminals and terrorists without crippling international trade and sparking outrage among the business persons, students, and tourists we need to attract to our country. Under the incremental system, we now have biometric review of all foreign visitors except diplomats, children, and the elderly at our air and sea ports, all visa holders at our busiest land ports of entry, and certain visitors departing the country at designated air and sea ports.

In addition to US-VISIT, DHS has utilized biometrics to facilitate secure travel across our northern and southern borders with the NEXUS and SENTRI programs. An even more ambitious international registered traveler program was announced by Secretary Ridge in January of this year to expedite known international travelers through immigration and customs processing.

An important and overdue integration of biometric systems occurred over the past year when CBP reached full integration of its Border Patrol facilities utilizing the IDENT fingerprint booking system with the FBI's IAFIS fingerprint system. This capability, reached ahead of schedule, means that CBP will be aware of any undocumented immigrants detained by the Border Patrol whose fingerprints reside in the IAFIS system because they have a prior criminal conviction or outstanding warrant, or left a latent fingerprint at a crime scene. CBP can thus make more informed decisions as to whether to detain such an individual or allow him or her to accept voluntary departure due to overcrowding in ICE detention space.

While these programs are aimed at foreign visitors, biometrics will soon play a key role in the security of passports issued to American citizens. Under the electronic passport program being developed by the Department of State and the Government Printing Office, U.S. passports will include a biometric facial image and biographic information which will be read via a contactless chip by passport readers deployed by DHS. The United States, like many countries around the world developing biometric passports, has seen deployment of this round of e-passports delayed while technical issues have been ironed out in international organizations and privacy concerns have been addressed. It is clear, however, that a well-designed U.S. passport program is essential to securing our own borders to detect foreign imposters and perhaps even those entitled to a U.S. passport with ties to terrorism or serious criminal behavior. It is more important to deploy an effective program utilizing the best technology and procedures available than to rush pilot portions of the program out the door. I have great faith in the Department of State team to navigate these difficult issues and produce this necessary result.

Also, while not the subject of this hearing, TSA has been building our biometrically-based systems to support the Registered Traveler program, to conduct background checks of HAZMAT drivers and foreign flight crews, and to secure access to sterile areas of transportation facilities through the Airport Access Control program and the Transportation Worker Identification Card. And, of course, numerous agencies have been improving their use of biometrically enhanced identification documents for employees and contractors, a process that will improve significantly with the full implementation of Homeland Security Presidential Directive 12 issued by the President in August of 2004.

US-VISIT

For many years after it was technologically possible, the United States lacked an automated entry and exit system that would allow us to know when foreign visitors arrive and when they depart. Following the bombing of the first World Trade Center in 1993, Congress demanded that an entry and exit system be installed at our ports of entry, but it did not happen, and none was in place on 9/11. Remarkably, on that date INS continued to rely on a paper system, and employees literally hand-keyed in departure information into a database weeks after the fact. With no exit system, and only a minimal, unreliable entry system, our entry and exit data was spotty at best, and criminals were able to come and go across our border, some of them dozens of times under different aliases, without detection.

But in 2004, DHS rolled out the entry-exit system known as "US-VISIT". We improved on the Congressional plan by adding a biometric requirement to the system. To capture biometrics, US-VISIT electronically scans a visitor's index fingers and takes a digital photograph at a kiosk – all in the space of seconds. The biometrics captured by US-VISIT allow consular and immigration officials to confidently tie travelers to the visas and passports they are carrying, and permit the development of an internationally uniform standard for identifying travelers.

As of May 31, 2005, DHS has enrolled 28,169,895 travelers in US-VISIT, with each watchlist check taking an average of 6 seconds. US-VISIT has allowed DHS to unravel the assumed identities of hundreds of foreign nationals attempting to unlawfully enter the United States. For example, an individual sought admission after flying into Newark International Airport. Everything appeared normal until his fingerprints were scanned. It turns out that the man was traveling under an alias and was in fact a convicted rapist. He had previously been deported from the United States, and had a traveled here before, using 9 different aliases and 4 dates of birth. US-VISIT has helped us to identify and to reject over 600 other undesirable individuals. These cases have utilized information originally collected in many different settings: by DOS during visa applications into the Consolidated Consular Database; by FBI during crime investigations into the IAFIS database; by foreign governments into Interpol; and by intelligence services. It is not possible to know how many terrorists or criminals have been frightened away from attempting to enter our country because of US-VISIT, but I have no doubt that the number is substantial.

However, certain analyses of the program, most notably a major piece in May 23's *Washington Post*, have misunderstood the program and the decisions that led to its staged deployment.

The article insinuates that key decisions made concerning US-VISIT were made by a handful of program officials and government contractors. Nothing could be further from the truth. Nearly all aspects of the program have undergone exacting scrutiny from the White House Office of Management and Budget and the Homeland Security Council, following robust debate and interaction with other key departments including Justice, State, and Commerce. During my tenure at DHS, Secretary Tom Ridge, Under Secretary Asa Hutchinson, Customs and Border Protection Commissioner Robert Bonner, and many others were intimately involved in developing policy guidance, interacting with other federal agencies and foreign governments, and supervising operations. The US-VISIT program team, led by Director Jim Williams, deserves great credit for effectively managing the program but they have done so under tight direction from the DHS leadership.

The 9/11 Commission took a hard look at the US-VISIT and basically said that DHS was on the right track, just to deploy the system more quickly. As the program tackles difficult increments ahead, the public should know that its public servants have, despite immense technological and political challenges, deployed a system that truly has enhanced our security without destroying the attractiveness of the United States as a place to study, conduct research or business, or see friends or family. In short, US-VISIT is a government program that actually works.

VISA WAIVER PROGRAM

As it is the most recent development in this area, the announcement last week by DHS Secretary Chertoff concerning the application of the statute requiring biometric identifiers established by the International Civil Aviation Organization for travelers utilizing passports issued after October 26, 2005 for travel to the U.S. under the Visa Waiver Program merits discussion. I believe the outcome announced by DHS is an appropriate one. The original, and worthy, goal of the Enhanced Border Security and Visa Entry Reform Act of 2002 was to leverage the international nature of ICAO to bring biometrics to the border. The decision by ICAO to mandate a digital facial image which could be compared to the person presenting the passport could represent a marginal increase in security by detecting persons with forged or stolen passports. However, the software that will allow such effective comparisons in actual field environments without generating unacceptable numbers of false positives is still under development. Allowing an additional year until October of 2006 to ensure interoperability of documents and document readers and enhancements to the facial recognition software is a wise decision. In addition, the damage to our economic relations and to the willingness of VWP countries and the European Union to work cooperatively on border management issues that enforcement of this year's deadline would have caused hardly would have been worth the marginal improvements in security possible this year. It is also very important to remember that when the EBSVERA was enacted, there was no US-VISIT program to find terrorists or criminals about whom we have biometric information. Thus a reinterpretation of a somewhat vague statute to reflect changed circumstances is a reasonable resolution of a looming crisis.

NEXT STEPS FOR USING BIOMETRICS TO SECURE OUR BORDERS

However, while the programs described above represent effective use of biometrics, this technology can and should provide significantly greater benefits to securing our borders and facilitating legitimate travel. Among the key recommendations I would like to provide the Committee to best put biometric technology to work include:

●   Transition to 10-Fingerprint Collection
It appears to have been somewhat forgotten amid the success of the 2-fingerprint system utilized by US-VISIT, but DHS promised from the beginning that a transition to 8 or 10 prints would be necessary at some point to address two separate weaknesses with the 2-print program. First, leading scientists at NIST and elsewhere have long believed that an IDENT database populated by millions of 2-print records would eventually begin to generate unacceptable levels of false matches. While I am not aware that this scenario has begun to occur, it must be tackled ahead of a crisis. Second, I understand that a small but potentially important number of latent fingerprints collected from crime scenes or terrorist investigations may elude matching in IDENT if they come from different digits, such as from thumbs, than are collected under US-VISIT. Deploying

10-print readers to consular posts abroad and U.S. ports of entry is a necessary transition over the next several years.

While many have discussed this issue in the context of the relative merits of the IDENT and the FBI's IAFIS fingerprint databases, the need for DHS and DOS to capture 10 fingerprints should not lead one to conclude that our border management systems could be based on the IAFIS system. IAFIS was not designed to run on a real-time basis, meaning it is an unlikely candidate to serve as the platform for an entry-exit system. DHS requested fingerprints held in IAFIS to load into IDENT and has received increasing cooperation from DOJ in this regard, but it is critical to remember that the overwhelming majority of IAFIS prints are of U.S. citizens who do not register with US-VISIT. The linkages between the systems need continued improvement but it would take a major overhaul of IAFIS to even consider utilizing it for real-time entry-exit purposes.

- Collection of Fingerprints in U.S. Passports

The United States has never advocated mandatory collection of fingerprint information in foreign passports, in part because it has never required that U.S. citizens provide fingerprints in their own passport applications. This decision needs to be reexamined. In part due to this decision, the United States and the larger world community are building out two elaborate but conflicting border management systems. In the first, governments are going to great lengths to collect terrorist fingerprints along with biographic information, to share such information with other governments, and to ensure that agencies within their government are sharing relevant fingerprints. Within the U.S. government alone, massive efforts have been expended to ensure sharing of relevant biometric information between agencies. In the second system, countries are building elaborate systems of tamper-resistant passports and passport readers capable of doing biometric comparisons; however, neither the mandatory biometric of facial recognition nor one of the optional biometrics, iris scan, can be utilized to find a known terrorist or criminal from a database, because such databases do not exist.

The historical resistance of governments to fingerprint law-abiding citizens, not only in the U.S. but in Japan, Australia, and numerous other nations, is weakening. The collective weight of the 28 million enrollments in US-VISIT is huge. The program applies to all nationalities and races, has generated no privacy complaints, and has not impacted the speed of border crossings. At a time when terrorists have killed large numbers of people in Asia, Europe, Africa, and other areas of the globe, in addition to North America, people are understandably willing to put aside nervousness about fingerprinting in order to cut off the lifeblood of terrorists – mobility across borders.

Thus I recommend that the U.S. match the bold step of the European Union to include fingerprints in passports and that the U.S. should advocate for fingerprints as a mandatory biometric in passports at ICAO. At a time when we are going to great lengths to build anti-terrorism and law enforcement systems based on fingerprints, we will never be able to fully engage other countries if we decline ourselves to do what is needed. Taking this step for U.S. citizens who travel internationally might also allow us to avoid a national identification card that many believe is appropriate for border security purposes.

Of course the U.S. government could attempt to build a regime to allow one-to-one biometric check between the person who applied for a passport and the person appearing for reentry to the

U.S. based on an iris, hand geometry or facial recognition match. Such a system, however, leaves extensive fingerprint information unutilized and denies us the "bully pulpit" to ask ICAO and other governments to march down the fingerprint path. It is also worth noting that current policy does not allow U.S. applicants to be vetted biometrically against criminal or terrorist databases before they are issued passports, meaning we may miss potential imposters or home-grown terrorists or criminals. Nor are we in a strong position to ask other countries to vet their applicants against watchlists they maintain or have rights to access. I am encouraged by the strong efforts of DOS to vet applicants against name-based databases such as the Terrorist Screening Center and certain lists of persons with outstanding warrants, but a fingerprint capability would augment those efforts considerably.

● Biometrics Are The Solution at Our Land Ports of Entry

The next handful of years will see a convergence of major initiatives affecting how traffic flows across our land borders with Mexico and Canada: the deployment of US-VISIT to primary lanes of our land ports of entry and exit; the requirement that U.S. citizens, Canadians, and residents of certain Caribbean nations present a secure travel document to enter or reenter the U.S.; and the possibility of a new guest worker program to ensure that foreign workers able to pass a security check are allowed to work for willing employers in the U.S. These three issues need to be considered in conjunction as border management systems are developed.

First, it is absolutely critical that the Congress aggressively fund US-VISIT so that land border implementation is not delayed. This project is extremely difficult but essential. Travel documents for Mexican nationals, most significantly Border Crossing Cards used for millions of trips a year, must be retrofitted or reissued to include information capable of being read wirelessly at land ports of entry. Entry traffic lanes must be constructed or altered to allow for wireless connectivity to identify watchlist or criminal hits in time for an inspector to refer a potential entrant to secondary processing. While it may not be feasible to conduct a one-to-one check on all applicants (i.e., is the person holding the identification card the same person to whom it was issued), a one-to-many check (i.e. does the information on the card indicate a watchlist hit) should be feasible.

The exit feature of the land borders is no less daunting as we currently have no exit infrastructure at all. A reasonable goal over the next several years is construction of a system that will inform DHS whether persons departing the U.S. have complied with the terms of their entry, with relationships built with Mexican and Canadian authorities to assist with the very rare case of a departing individual who needs to be apprehended immediately.

In addition, I understand that maintaining current levels of funding for US-VISIT may delay full implementation of the exit component at air and sea ports. DHS has had enough pilot testing done on a variety of biometric exit models involving kiosks, departure receipts, and gate confirmation to make decisions on the best system to deploy. It is time to round out that aspect of our entry-exit system to identify those who violate the terms of their visa and the occasional but important instances where a known terrorist or violent criminal is attempting to depart the country. US-VISIT's recent identification of a sexual predator seeking to leave the country in Texas is a great example of an exit enforcement capability. I also believe that having a robust exit system may allow the country to consider changes to the current statutory standard that visa applicants prove that they are unlikely to overstay their visas.

Lastly, US-VISIT's end state will include a "person-centric" inventory of all relevant enforcement and immigration services information. When fully-funded and implemented, the program should put an end to the unwieldy and confusing system of records maintained regarding travel and immigration and will result into better service to legitimate travelers and students, and better enforcement tools as well.

Second, the passage of the Western Hemisphere Travel Initiative last year as part of the intelligence bill means that millions of U.S. citizens returning the U.S. and many Canadians and nationals of certain Caribbean nations will be required to produce a secure travel document such as a passport or SENTRI or NEXUS card beginning in 2008. I congratulate the Congress for this important security enhancement, but recognize that the law will create immense workload challenges for DOS and lifestyle changes for border residents. This increased workload makes the challenges to deploy US-VISIT and next generation passports all the more important.

Third, discussion about a temporary worker program has intensified since President Bush's 2004 request that Congress enact such a program in line with his immigration principles. Some commentators have presented the issue as a choice between a new worker program and enhanced border security. Such analysis is wrong. It is the passage of a properly developed guest worker program that will bring massive improvements in border security and thus homeland security. Millions of undocumented aliens have crossed the border illegally in search of work who present no risk of terrorism or organized criminal activity. Border Patrol agents in the field, however, have no way to differentiate between the individuals that make up this flood of human migration and the small but crucial number of potential terrorists or criminals that attempt to blend into the masses. Providing those who want to work and have no prior criminal or terrorist record a means to enter the country legally through ports of entry will make it much more likely that the Border Patrol will be able to locate and arrest the criminals and terrorists who will lose their cloak of invisibility that the current situation offers.

However, those who are skeptical of this argument have understandable reasons for this view. For decades, enforcement tools to combat illegal immigration went underutilized, underfunded, or unsupported by the employer community. While DHS has made substantial progress in enforcing the current regime, deploying a new guest worker program will require significant new resources for border and employer enforcement and for port of entry operations and facilities, development and issuance of tamper-proof identification documents, streamlining of the legal regimes that adjudicate the status of border crossers and undocumented aliens, and new avenues of cooperation between the U.S. and Mexican government.

All of these enhancements to our current enforcement posture should support a basic motto of any new legislation: "deter and reward." Those who are seeking to enter our country to work must be faced with a reality that crossing our borders illegally or attempting to work without proper certifications will be detected and punished with long-term consequences for violations. In contrast, those that follow the rules on applying for work, passing a security check, and crossing the border legally should be able to work and receive retirement and travel privileges.

Among the specific recommendations I would like to provide the Committee concerning the proposed temporary worker program related to biometrics are the following:

     ○   Interview and Criminal History Background Checks: Any new applicant should be required to submit ten fingerprints for a IDENT and IAFIS review to demonstrate, in addition to any employment criteria designed to ensure that the entrant's employment is not likely to be filled by a U.S. worker, that he or she has no ties to terrorism or history of prior criminal behavior other than non-violent illegal entry to the U.S.;

     ○   Use of Biometrically-Enhanced Identification Documents: Any new entrant should be required to obtain a unique, biometrically-enhanced identification document that can serve as a document for entry under US-VISIT at a port of entry and as an employment verification document;

     ○   Employment "Insta-check": Employers should only be able to hire new temporary workers from outside the U.S. after DHS and fellow agencies have developed and deployed a "insta-check" system pulling biometric information off travel documents to verify eligibility for employment and reviewing Social Security and driver's license numbers from new workers asserting U.S. citizenship;

These proposals address the machinery by which new entrants, legal and illegal, should be handled. Of course, any new temporary worker program also must be structured to allow existing undocumented workers to apply for employment. The security imperative for this class of aliens is that they undergo a vetting for ties to terrorism and criminal behavior before they are authorized for further employment in the U.S. Understanding that a principal reason for the program is to continue an adequate supply of workers for current jobs, there is no reason that this security review cannot be conducted while the worker remains in the U.S. However, just as one of our bedrock principals of our overseas visa process is collection of biometrics by a trained U.S. government official to ensure that the applicant is not an imposter, consideration should be given to requiring provision of biometrics by this population to a U.S. government official, especially if the resulting document will be utilized for international travel.

●   International Registered Traveler Programs

A key component of continuing to attract foreign travelers to the U.S. should be an international registered traveler program. This program would build on the existing CBP NEXUS and SENTRI programs for land and air travel between the U.S., Canada, and Mexico and bring to life the vision of Secretary Ridge's January 2005 announcement of such a pilot operating between the Netherlands and the U.S. While it would be beneficial to travelers who undergo enhanced vetting to receive preferential treatment at a foreign departure airport, the main use of biometrics would be to exempt IRT enrollees from normal immigration and customs processing at U.S. ports of entry. Enrollees would simply have their travel documents scanned at a kiosk, provide fingerprints to ensure a match to the documents, and proceed to pick up their luggage. This system will require construction of real-time connectivity to the IRT kiosks. On the front end, enrollees would need to be vetted for any connection to inadmissible behavior, including terrorism, criminal behavior or prior immigration violations. Especially for Visa Waiver Program travelers who have not been required to undergo a terrorism check because they did not apply for a visa, such a scrub will need to be thorough and include an interview by a trained U.S. inspector. If done correctly, the program would be an excellent example of risk management to enable CBP to focus on riskier visitors. It would also send a strong signal to the customers, clients, and coworkers of the world, whose travel we need to be able to expedite, that the U.S. is open for business.

●   International Cooperation

By definition, border management systems involve international cooperation, and the effectiveness of our use of biometrics will depend greatly on our ability to operate effectively in the bilateral and multilateral environments. Negotiating information-sharing agreements or playing a leading role in international standards-setting bodies may not be as sexy as deploying new high-tech biometric equipment but both are crucial to our success.

Developing information-sharing agreements with foreign partners is a laborious process that has to deal with varying privacy regimes, technical challenges, and concerns about revealing sources and methods of intelligence. However, we know that terrorists and other criminals must use international travel to develop their plots and the development of robust sharing agreements of biometric and biographic watchlist information should be a high priority. Especially with allies like the United Kingdom and Canada, these types of agreements dramatically increases the odds of using travel checkpoints to find those who need to be detected.

I would make a special mention of the European Union's Visa Information System due to come on-line in the next several years. Having negotiated the treaty on airline passenger data with the EU last year, I know how difficult it may be to build interoperability between the VIS and our BioVisa/US-VISIT program. Now is the time to begin to tackle that challenge as our citizenries should expect these systems to share valuable intelligence when they are both operational.

In addition, DHS needs to increase dramatically its engagement with foreign governments and international standards setting bodies such as ICAO. The proposed merging of the BTS Policy office, the DHS Office of International Affairs, and other policy entities in DHS into a robust policy office is a necessary first step. DHS needs to develop a cadre of country specialists and DHS attaches to represent the department in key international locations and to ensure that DHS policymaking does not stop at the water's edge.

CONCLUSION

I congratulate the Committee and Subcommittee for its continued cooperation with and oversight of DHS and its component agencies. I thank you for the opportunity to appear before you today and look forward to your questions.